IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 31980 of 2007(F)

PETITIONERS:

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1. **SHAJI, S/O.AMBI NADAR, AGED 37,**
   MANARTHALA VEEDU, PAPPANAMCODE P.O.
   THIRUVANANTHAPURAM.

2. **SUBHA RANI, D/O.SARASWATHI BAI,**
   MANARTHALAVEEDU, PAPPANAMCODE P.O.
   THIRUVANANTHAPURAM.

3. **SHEELA, D/O.SARASWATHI BAI. -DO-, -DO-**

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.K.B.SUJAIKUMAR
SRI.T.V.JAYAKUMAR NAMBOODIRI
SRI.THUSHAR NIRMAL SARATHY
SRI.M.M.VINOD KUMAR
SMT. K.M.RAMYA

RESPONDENT:

VASANTHA, D/O.PONNAMMA,
CHERUCODE MEKKUMKARA PUTHENVEEDU,
VILAPPIL, PEYAD P.O., V.P.NO.3/704,
A.R.A.NO.10, THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 31980 OF 2007

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Dated this the 29th day of October, 2007.

J U D G M E N T

This writ petition is filed challenging the order of the III Addl. Munsiff, Thiruvananthapuram in E.P.411/06 in O.S.231/85. The said application was moved for effecting delivery of the property after removal of any obstruction, if any, caused by the 5th defendant in the suit. During the pendency of the proceedings the 5th defendant died and his legal representatives are impleaded as respondents 15 to 19 and it is submitted that it is the 19th respondent who is causing obstruction. The difficulty of this Court at this stage is that there is no decree passed against the 5th defendant and it is specifically stated that "the plaintiffs 2 to 4 are entitled to recovery of possession of the plaint schedule properties from the contesting defendants 1, 8 and 9". There is nothing to show that a decree had been passed against all the defendants. The executing Court ordinarily

cannot go beyond the decree. Therefore, I cannot find fault with the learned Munsiff in rejecting the application. But there may be circumstances in some cases where the decree moulded has to be clarified by the Court which passed the decree. Therefore, leaving open the right to the decree holder to move an appropriate application for clarification this writ petition is disposed of.

M.N. KRISHNAN, JUDGE.

ul/-